

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER Z. SIMONI,

Plaintiff,

v.

VILLAGE OF SODUS AND BOARD OF
TRUSTEES, Brenda Rowe, William Critchfield
and Sharron Purdy,

Defendants.

DECISION & ORDER

11-CV-6177CJS

Plaintiff in the above-captioned matter filed the instant action on April 7, 2011 alleging that defendants discriminated against him in employment in violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act and the New York Human Rights Law. (Docket # 1). On September 23, 2011, plaintiff moved to supplement his complaint to include allegations of conduct occurring since he had filed the original complaint, including his termination of employment on June 1, 2011. (Docket # 9). Plaintiff failed to attach to his motion a proposed amended complaint as required by Local Rule 15 of the Federal Rules of Civil Procedure. Defendants opposed plaintiff's motion on the ground that plaintiff had not exhausted his administrative remedies and had not received a right to sue letter from the Equal Employment Opportunity Commission ("EEOC") regarding his May 24, 2011 complaint to the New York State Division of Human Rights. (Docket ## 13, 14).

On December 12, 2011, the plaintiff moved to "quash" the defendants' opposition to his motion to amend the complaint on the ground that on November 7, 2011, the New York

State Division of Human Rights had rendered a decision on his May 24, 2011 administrative complaint and he expected the EEOC to issue a Notice of Right to Sue letter shortly. (Docket # 19). On January 6, 2012, defendants notified this Court that they withdraw their opposition to plaintiff's motion to amend his complaint conditioned on plaintiff's receipt and production of the Notice of Right to Sue letter from the EEOC. (*See* January 6, 2012 letter from Christian Jones, Esq.).

Accordingly, the parties are directed to notify this Court within ten days of receipt of the anticipated Notice of Right to Sue letter from the EEOC. Plaintiff's motion to amend his complaint (**Docket # 9**) is **DENIED without prejudice to renewal** upon receipt of the Notice of Right to Sue letter from the EEOC. Plaintiff must file such a motion within thirty days of receipt of the EEOC letter. Any such motion must be accompanied by a proposed amended complaint that will supercede the original pleading in all respects, in accordance with Local Rule 15 of the Federal Rules of Civil Procedure. Plaintiff's motion to quash (**Docket # 19**) is **DENIED as MOOT**.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
January 10, 2012